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HAROLD B. WILLEY, Clerk

No. 722

In the

United States Supreme Court

October Term, 1955

WESLEY COFFMAN,
Petitioner,

vs.

THE STATE OF OHIO,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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I. CITATIONS TO OPINIONS BELOW

Opinions below are adequately set forth in the petition.

II. QUESTION PRESENTED

The question presented in petitioner's brief and in his arguments are difficult for respondent to understand. We assume, however, the petitioner's issue to be, is it necessary for a state court to hold a hearing to determine whether or not the federal constitutional rights of the defendant have been violated?

III. CONSTITUTIONAL PROVISIONS INVOLVED

Respondent contends that there is no constitutional provision involved.

IV. STATEMENT OF THE CASE

The petitioner, Wesley Coffman, and his brother-in-law, William Schmitt, were jointly indicted in the Common Pleas Court of Hamilton County, Ohio, for the crime of rape. Both pleaded not guilty; both waived trial by jury and their cases were tried to the court; both were found guilty as charged and both appealed to the First District Court of Appeals and the convictions were sustained. An Appeal of Right and a Motion for Leave to Appeal were filed in the Supreme Court of Ohio. The Supreme Court of Ohio dismissed the Appeal as of Right and overruled the Motion for Leave to Appeal.

In the trial court the state offered a witness to testify to a conversation with the petitioner. Before this evidence was received the attorney for Wesley Coffman requested and was permitted the right to interrogate that witness and then called petitioner to inquire as to whether or not the conversation was voluntary. All this was done prior to receiving the conversation in evidence. On the basis of this inquiry the court permitted the conversation to be admitted as it applied to the petitioner's case.

V. ARGUMENT

We contend that the issue raised is a moot question because the trial court did conduct a hearing to determine the constitutional rights of the defendant. (Petitioner's Brief, Appendix A.) This testimony was made a part of the record and considered by the trial court and appellate courts.

It is contended by the petitioner that the decision in the case of *Herman, Commonwealth of Pa., ex rel.* v. *Claudy*, 24 Law Week, 4055, is the basis of this writ. We submit the law in the *Herman* case does not apply to the case at bar because the *Herman* case considered (1) a habeas corpus proceeding, (2) wherein the trial court denied a hearing to the petitioner, and (3) the hearing of the trial court was summarily denied solely because the prosecuting attorney filed an answer contradicting the allegations of the petition, no testimony having been received. The case at bar is not (1) a habeas corpus proceeding, (2) the trial court did not deny hearing on any issue of the case. Petitioner's Appendix A quotes part of the record of the testimony of the trial court, pages 38 through 52 and pages 76 and 77. We submit there was a complete and thorough hearing of all issues and questions involved and that the petitioner was not limited or curtailed in his examination, and (3) it cannot be contended that the petitioner's claim in the trial court was summarily dismissed on an answer filed by the prosecuting attorney because the prosecuting attorney did not file such an answer. It is, therefore, our contention that the law in the *Herman* case does not apply to the case at bar.

We cannot logically analyze petitioner's brief, but we do not think he is contending that the appellate court committed error by failing to call witnesses to testify at the hearing on appeal. This appeal in the appellate court was not one for trial denovo.

As long as there was a complete hearing in the trial court, a complete review orally and on briefs in the appellate court, briefs filed and an oral hearing and rehearing in the Supreme Court of Ohio, we cannot understand what further hearing the petitioner would be entitled to that would cause a federal question to be involved.

Petitioner, in his brief, page 6, subsection (d), quotes one of the witnesses unfairly. He quotes only a part of the answer of the witness. We refer the court to his brief, page 13a, for a full quotation of that statement which definitely shows that the conversation referred to in said quote took place after the defendant had given his statement and also explained the reason for the statement being given. We further contend that if a defendant gives a statement to a police officer and after the statement has been given a discussion then takes place as to possible penalties, that such a statement as to penalties does not make the prior admissions inadmissible.

We must contradict the statement in petitioner's brief, page 5, that there was no evidence other than the confession to connect petitioner with the crime charged. We respectfully refer to page 60 of the record which relates a complete statement of William Schmitt wherein he connected Wesley Coffman in detail with the entire crime. At pages 75 and 91 he again identifies Wesley Coffman with the crime. There is also a great amount of circumstantial evidence throughout the record proving the petitioner's part in the crime.

We do not agree that a federal question is presented, and further contend that the petitioner did not preserve the issue for appeal. The basis of that argument is contained in the record, page 38, (Petitioner's Brief, Appendix A) where Mr. McIlwain, petitioner's attorney, requested:

> "If your Honor please, before we go on, this is what is referred to as a confession, as your Honor knows, and I would like to be heard in reference to the voluntariness of it before it's admitted in evidence."

At the end of interrogation by Mr. McIlwain, Record P. 52, petitioner's Appendix A, 12a, the atorney then stated:

> "I have nothing else on that now, your Honor."

It will be noticed that the petitioner *did not make an objection* to the testimony being offered, he merely asked for permission to interrogate the witness as to whether or not the admissions had been made voluntarily. We also wish to call to the attention of the court that *there was no exception taken* when the court permitted the testimony to be received. We, therefore, contend that on this issue there is nothing presented to this court for review. *Brink* v. *U. S.* 60 Fed. (2d) 231, certiorari denied, 53 Sup. Ct. 291, 287 U. S. 667; *Stembridge* v. *Ga.*, 343 U. S. 541, at 547.

Even if a question is presented, which we deny, we submit that the exhibits, the testimony and the admissions were convincing beyond any doubt of the guilt of the petitioner. We submit that the decisions of the trial court and the two appellate courts were correct.

It has been the rule of this court that a writ will not be granted merely to give a defeated party another hearing. *Magnum Co.* v. *Coty*, 262 U. S. 159. Nor will the court review a decision on a question of fact. *Grayson* v. *Harris*, 267 U. S. 352, at 358; *Portland Ry. Co.* v. *Rd.* 229 U. S. 397, at 412; *Fry Roofing Co.* v. *Wood*, 344 U. S. 157, at 160.

Petitioner's brief argues, page 5, "Certiorari should be granted to strengthen, fortify and emphasize the decision in the *Herman, Commonwealth of Pa., ex rel.* v. *Claudy*" case. We do not interpret Supreme Court Rule 19 to include this as a reason to grant a writ.

It is, therefore, our contention that no issue was raised in the trial court which would involve a federal question; that no objection or exception was taken in the trial court to the testimony now objected to; that the trial court was fully justified in its finding; that the petitioner was proven guilty beyond any doubt and that there is no legal reason for a writ to be issued by this court.

VI. CONCLUSION

For the above reasons it is respectfully submitted that this Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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Ass't Prosecuting Attorney,
Counsel for Respondent.